



Ombudsman Manual

This handbook establishes policy and procedures intended solely for the use of the Agency for Toxic Substances and Disease Registry (ATSDR) Ombudsman and staff. The purpose of the manual is to provide key information necessary for successful operation of the Ombudsman program. These policies and procedures are not intended, nor can they be relied upon, to create any right enforceable by any party in litigation with the United States. Officials of the agency may decide to follow the guidance provided in this document, or to act at variance with the guidance, based on an analysis of circumstances. The agency reserves the right to change this guidance at any time without public notice.

The handbook is a quick reference manual to which ATSDR employees may refer to assure an effective and consistent Ombudsman program. The material presented is to be viewed as a framework, rather than as specific procedures that must be followed. This recognizes the need for flexibility in the actual implementation of a successful program. The sections are organized by topic to facilitate finding an appropriate item.

This manual does not provide procedures for handling every problem. The wide-ranging nature of the Ombudsman program precludes a handbook that details formulaic solutions to every problem that may arise.

An Ombudsman's procedures may vary depending on the issue. The issue may call for the Ombudsman to assist the complainant to deal with the issues presented, informally intervene, educate, mediate, investigate, assist in public participation, or conduct an inquiry of a situation to determine whether there is a systemic problem that should be addressed.

Foreword

Environmental health issues are complex and challenging. These challenges must never deter us from the primary mission of the Agency for Toxic Substances and Disease Registry (ATSDR): protection of the public's health. It has long been the practice of ATSDR to obtain public participation in our Agency's programs in ways that promote public health.

In 1996, during a meeting with community and tribal representatives, a recommendation was made to increase public participation by the inclusion of an ATSDR Ombudsman. It has taken time to take the recommendation from an idea to a reality, but we now have an active Ombudsman program. Through this program, persons who do not feel the appropriate decision(s) have been made, have a non-legal, non-threatening, red tape removing means of redress after having worked within the established system. Our Ombudsman serves as a neutral party to facilitate resolution to problems or complaints from the public affected by our decision making.

This *ATSDR Ombudsman Manual* has been developed to outline the roles, responsibilities and authorities of our Ombudsman. The manual will assist ATSDR management and staff and the general public in understanding the functions of the Agency Ombudsman. In the years ahead, the manual and the Ombudsman program will increase the ability of the Agency and the public to work together toward the common goal of *healthy people in a healthy environment*.

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Section I

Introduction and Background

Laws governing hazardous waste and the associated regulations involve some of the most complex programs developed by governments. This vast complexity has generated confusion, problems, and complaints. Likewise, the problem extends to questions of public health and the determination of risks for persons working or living near hazardous waste or chemicals.

Many citizens and community members do not know how to gather information, or they feel a sense of frustration in their attempts to cope with the complexities of the hazardous wastes programs. The Ombudsman program is intended to provide assistance concerning any problem that people may have concerning the agency's missions relating to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), Resource Conservation and Recovery Act (RCRA), and the National Contingency Plan (NCP).

Before the creation of the Ombudsman position, ATSDR did not have a single point of contact whose essential purpose was to assist the public in resolving problems of public health arising under the hazardous waste programs. The Ombudsman program is intended to assist those citizens and members of the state and local governments, tribes, other federal agencies and the regulated community who have been unable to voice a complaint or get their public health problem resolved through the normal channels. The Ombudsman program is not intended to circumvent existing channels of management authority.

The Nature of the Ombudsman's Job

The Ombudsman's major task is to handle complaints from citizens, state and local governments, tribes, federal agencies, members of Congress and other political interests, public interest groups, and the regulated community. In doing so, the Ombudsman obtains facts, sorts information, and substantiates policy in order to remedy problems. This task will require a range of communications skills, including interviewing, listening, and report writing.

An Ombudsman is the impartial public official who investigates complaints about the actions of government officials or administrative actions and seeks to correct problems, where warranted. The Ombudsman lacks legal authority to reverse or modify any program decisions of actions, either those already taken or those that may be taken in the future. However, on the basis of sound information gained through contact with the public and ATSDR staff, the Ombudsman may, on occasion, effect program adjustments in resolving particular problems.

The Ombudsman's job is a people-oriented job. Therefore, the more the Ombudsman likes and understands people, the more he/she will likely be successful in the Ombudsman job.

An Ombudsman is

- knowledgeable
- independent
- impartial and nonconfrontational
- sensitive, empathetic, and patient.

An Ombudsman will need to employ a variety of "people skills" to serve effectively as a facilitator among stakeholders and promote resolution of health-related issues. An Ombudsman will require the ability to promote constructive dialogue among groups with differing interests and opinions, and sometimes among hostile parties. He/she must also have the ability to develop, evaluate, and successfully propose alternative solutions to issues. Additional skills required may include facilitation, mediation, negotiation, and fact-finding.

To be effective, the Ombudsman must develop the confidence of the citizens, the state or local governments, the regulated community, tribes, the staffs of other federal agencies, and the ATSDR staff. Impartiality is essential to the effectiveness of the Ombudsman. Fair and responsible assessments of complaints brought to the attention of the Ombudsman are critical. The Ombudsman must work within the agency's system to address problems.

The Ombudsman must expect that those who call him/her might be highly displeased and frustrated with the agency or the government. The Ombudsman must expect to dispassionately handle many different types of complaints and areas of conflict. In many cases, the "conflict" may only be a person's frustration or anger at not being heard.

Often, logic alone is not enough to calm a hostile complainant. One cannot dismiss anger by request. Therefore, the Ombudsman will need to use empathy to guide behavior down more productive avenues, such as a problem resolution. The Ombudsman will need patience and empathy when dealing with sensitive situations and individuals who openly express their hostility.

By exercising care and sensitivity in stating complaints the Ombudsman will help facilitate a successful outcome. For example, the Ombudsman may reduce the opportunity for a successful outcome by accusing, criticizing, blaming, or attempting to demonstrate superiority. Cooperative relationships and successful outcomes are likely to develop if the Ombudsman strives to support the parties concerned, describe the facts objectively, exhibit a problem-solving orientation, and seek fairness. Sensitivity to uncomfortable feelings that may exist among all the parties removes many roadblocks to problem resolution.

On some occasions, the Ombudsman will be involved in conflict situations. Conflict has been defined in terms of incompatible goals and different values. However, such differences are frequently perceived rather than real. If the parties can find **common ground**, they may realize that resolving the issue is in their mutual interests, and then the problem-solving process can begin.

The most important method of accomplishing resolution is to depersonalize the situation. In other words, situations may be described in such a way that no party is threatened or judged negatively. Whenever possible, the Ombudsman should make use of negotiation skills to find acceptable solutions and should consult widely and tap into the knowledge and insights of the public. An effective Ombudsman helps bring people together by acting as a mediator.

The Ombudsman cannot be an advocate for ATSDR. Neither should the Ombudsman be a substitute for the normal process. The Ombudsman is not to be considered another forum to question or challenge agency policy. The Ombudsman must function, not as a substitute, but as a supplement to existing institutions in the assessment of public health and health risks relating to hazardous waste. Agency staff and the Ombudsman are seeking the same end: to ensure that, during actions relating to hazardous materials, the public health is protected and the agency is responsive to public participation in its actions.

Four Tips For Handling Complaints

1. Focus on the issue, not the person(s).
2. Try to define issues in terms of public health results.
3. Do not place persons in a win-lose situation.
4. Promote discussions that enhance the building of relationships rather than conflicts.

When conducting an inquiry, the Ombudsman will strive to keep issues at the lowest level of the following three interest levels while operating from the perspective of a neutral party:

- Level I Interest based (I or we have a problem)
- Level II Rights based (attorneys become involved in the matter)
- Level III Power based (political interests become involved in the matter).

In the brochure, *The Ombudsman: A Primer for Federal Agencies*, the Ombudsman is defined as being . . . “client centered but anti-bureaucratic, and rather than being a client advocate, the Ombudsman is nonpartisan and impartial as an investigator.” It is this *neutral*, third party concept that ATSDR has elected to employ as a basis for the Ombudsman program.

Congress has become increasingly aware of the complex issues relating to hazardous waste and public health issues. Mindful of this complexity, Congress could foresee a need for enhanced public understanding of these issues and the need for community involvement in the resolution of the issues. In passing the Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act (RCRA), Congress included Section 2008, which mandated the establishment of an Ombudsman in the U.S. Environmental Protection Agency (EPA). Since that inception, EPA has expanded the role of the National Ombudsman and created additional ombudsman positions at each Regional Office.

ATSDR felt the need to establish a system to cut through red tape in addressing public concerns and to provide a forum so states, local governments, tribes, community groups, and other federal agencies could become informed regarding public health issues. Thus, the Ombudsman has been granted the independent authority to cut across bureaucratic lines to get answers and settle complaints quickly and provide ready access to information.

The Ombudsman is a government resource for resolving disputes that persist in spite of efforts to deal with them at an operational level. The Ombudsman serves as an objective facilitator to help the Agency and its customers reach mutually acceptable solutions to public health issues. A part of the Ombudsman's effort will include working with federal, state, or local agencies to gather complete information to consider in the public health problem-solving process.

Section 2

The ATSDR Ombudsman: Procedures and Protocols

The Ombudsman is the ATSDR public official with the independent authority to investigate public health issues relating to hazardous substances, sites, and releases. The ATSDR Ombudsman is available to *all* parties; this means that the Ombudsman program is open not just to the public, but to corporate and governmental entities as well. Any party who is involved in a matter in which a resolution to a particular issue is required should have access to the Ombudsman for assistance in the development of workable and supportable solutions. The Ombudsman is part of the Alternative Dispute Resolution (ADR) process and will serve as the neutral third party supplied by the agency.

EPA/ATSDR Ombudsman Coordination

It is likely there will be occasions when parties seeking resolution to issues may contact the Ombudsman of one agency when the responsibility for the issue or matter lies with another agency. Such occasions are likely where the public may not understand the specific responsibilities of agencies, in particular those of ATSDR and EPA.

In instances where requests for assistance are received from the public and another agency should respond, the Ombudsman will seek to refer the caller and the matter to the appropriate agency.

To be responsive to the caller's needs, ATSDR will attempt to coordinate caller referral with EPA and/or other agencies. Likewise, ATSDR welcomes the opportunity to consider matters referred by EPA and other agencies.

The ATSDR Ombudsman will provide ample notice to the appropriate regional representative(s) of any decision to visit a region in his/her official capacity to work on matters or issues relating to public health. The regional representatives may notify the appropriate EPA regional staff and/or the state/local health departments of the impending visit.

Ombudsman Responsibilities and Activities

Core Operating Principles for the Ombudsman

- The Ombudsman is a facilitator, not a decision maker.
- The Ombudsman expedites decisions by making process recommendations.
- The Ombudsman responds to postdecision complaints.
- He/She initiates and conducts independent investigations.
- He/She develops measures of program success and performs administrative functions.

Because the core principles for the Ombudsman are so integral to determining the responsibilities of the Ombudsman, some overlap is unavoidable between the Ombudsman and other program elements within ATSDR. Nevertheless, it is important to list the responsibilities of the Ombudsman's job. Therefore, without intending to be redundant, this handbook lists the responsibilities below:

An Ombudsman:

- serves as a facilitator (not a decision maker) to assist in seeking creative resolutions to stakeholder concerns;
- actively promotes the concepts of alternative dispute resolution to all stakeholders in ATSDR's public health evaluations and studies relating to hazardous waste;
- assists stakeholders in gaining access to information that will help them participate more fully in established agency processes;
- makes recommendations to agency management on ways to make its public health evaluation program processes more efficient and effective;
- works to expedite public health program decisions by making process recommendations to management;
- responds to stakeholder complaints by initiating fact-finding investigations related to a particular public health related issue; and
- initiates fact-finding investigations without public complaint (of his/her own volition) if appropriate

The Ombudsman operates in support of the program process. The Ombudsman employs the premise of encouraging and improving the use of current processes employed by ATSDR for the evaluation of the risk and potential impact of public health.

The Ombudsman and Process

Upon the receipt of an inquiry, the Ombudsman will seek to determine whether the caller/writer has sought resolution to the issue of concern through working within the existing process or system. For example, the Ombudsman should ask if the caller has addressed the issue with the appropriate ATSDR staff/program office, the Community Involvement Branch, local or state agencies, or the ATSDR regional office(s).

If the caller has not sought resolution within the system, the Ombudsman will facilitate communications between the caller and the appropriate individual(s). If the caller has employed the existing system and has not resolved the issue, the Ombudsman may commence an effort to develop a workable solution to the issue. However, the Ombudsman need not wait to receive a complaint, but may initiate action in a matter on his/her own initiative. There is no requirement that the Ombudsman act on the basis of a complaint or referral.

The Ombudsman works to ensure that ATSDR follows its established policies and procedures within the public health evaluation processes and that citizens have an opportunity to be heard. When concerns are raised, the Ombudsman assists the citizens and staff in reaching acceptable resolution. The Ombudsman provides assistance by

- helping citizens understand and work through the relevant decision-making process;
- facilitating and/or mediating discussions between citizens and agency staff to address concerns that persist after the agency renders a decision;
- coordinating contact with the appropriate person(s);
- researching agency decisions; and
- writing recommendations to the agency's senior management when a resolution cannot be reached between the parties.

The Ombudsman program also supports improvements in the agency's health studies and evaluations associated with hazardous and solid waste activities. If in conducting an inquiry the Ombudsman determines that elements of the processes are needlessly cumbersome to effect stakeholder participation, the Ombudsman may recommend process changes to the appropriate management officials for consideration.

Ombudsman Participation in Public Meetings

To conduct inquiries in an effective manner, it may be necessary for an Ombudsman to participate in public meetings or other meetings related to Agency actions. The Ombudsman may initiate and conduct meetings with stakeholders in an attempt to reach resolution. To the maximum extent possible, all meetings convened by the Ombudsman, acting in his/her official capacity, will be open to participation by the public.

Responding to Inquiries

Every attempt will be made by the Ombudsman to respond to inquiries from the public. However, in some instances, the Ombudsman may not agree to investigate or facilitate a matter. Some of the reasons the decision is made to deny an inquiry request will be

- timing of the request (request is predecision or the project is nearing completion);
- insufficiency of the information (generalities as opposed to specifics);
- failure of the requestor to cooperate in the inquiry;
- workload already in process; and
- another system of resolution is in place for the subject matter (i.e., EEO complaints, hostile work environment claims, or criminal activity)

The Ombudsman determines which requests to handle by

- recognizing the limits of his/her authority;
- using judgment to analyze the expectations of the constituent;
- considering the Agency's need to be responsive;
- time constraints and timeliness of inquiry within the decision-making processes;
- potential impact of the inquiry on future Agency actions (precedence); and
- potential impact of the Agency action on disadvantaged communities.

While many requests for assistance are routine information requests, the Ombudsman will actively seek to assist the requestor in gathering the information by determining the appropriate office to which the caller should be referred and facilitating the communication between the parties. Requests for more complex information, or a concern or reflection about the manner in which the Agency's programs have dealt or failed to deal with a particular concern should be handled by the Ombudsman.

Access To Management

It must be recognized that the Ombudsman does not make decisions regarding public health evaluations, risks, and site or facility activities and cannot change staff decisions. However, the Ombudsman has direct access to top management and can cut through “red tape” to research problems and make recommendations to decision makers.

The Ombudsman’s power is that of reason, to investigate and recommend. To ensure the “neutral third party” stance, the ATSDR Ombudsman is to work outside the decision chain, and not in the actual development of a decision.

The Ombudsman must have immediate access to the Agency’s Assistant Administrator, the Deputy Assistant Administrator, the Associate Administrators, the Division Directors and the other appropriate staff members deemed necessary for the effective resolution of matters and grievances.

Confidentiality

Rarely will the Ombudsman make lengthy, detailed notes about an official inquiry because any notes could be subject to requests under the Freedom of Information Act (FOIA) and/or subpoenas. Although a body of law does exist to support withholding of Ombudsman-related documents, the Ombudsman will strive to foster public trust in his/her position by limiting note-taking activities. ATSDR, the Public Health Service, and the Department of Health and Human Services will make appropriate effort to prevent the release of Ombudsman notes and work product’s that are requested via the Freedom of Information Act (FOIA) or subpoena.

In addition, the Ombudsman will make appropriate effort to inform parties submitting materials for Ombudsman review that documents will be made available to the public in their entirety. Stakeholders may be advised not to provide the Ombudsman with documents or information of a confidential or personal nature.

If necessary, the Ombudsman may employ the services of a court reporter to record the proceedings of public meetings. In such cases, the public will be advised of the effort to document the proceeding(s). If any participant is opposed to having his/her comment(s) documented, the Ombudsman may, in his/her discretion, provide an alternative means of receiving the comment (i.e., have the court reporter temporarily stop documentation).

The Ombudsman facilitates the resolution of issues in controversy by a variety of methods of alternative dispute resolution. Regardless of the method of dispute resolution used, the Ombudsman will in every case

- serve as a liaison for effective communication, and
- provide a safe haven for exploration of options.

An Ombudsman's ability to receive information and keep it confidential is critical to fulfilling these dispute resolution objectives. Ombudsman clients will be optimally encouraged to engage in frank, truthful discussions with the Ombudsman when they believe that the information and views they share will remain confidential.

In recognition of the need for a meaningful assurance of confidentiality, the Alternative Means of Dispute Resolution in the Administrative Process Act (ADRA) (5 U.S.C. Section 571 et seq.) provides for the confidentiality of dispute resolution communications. Although aspects of the law have not been thoroughly tested in court, the ADRA provides that a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral unless

- all parties to the dispute and the neutral consent in writing;
- the dispute resolution communication has already been made public;
- the dispute resolution communication is required by statute to be made public; or
- a court determines that the neutral's testimony or disclosure is necessary to prevent a manifest injustice, help establish a violation of law, or prevent harm to public health or safety (5 U.S.C. Section 574[a]).

ADRA states further that dispute resolution communications that are not disclosable under these provisions are also exempt from disclosure under the Freedom of Information Act (5 U.S.C. Section 552[b][3]).

The Ombudsman will extend to every Ombudsman client (i.e., member of the public or industry, or ATSDR employee) communicating with the Ombudsman in the context of an informal dispute resolution proceeding their pledge of the maximum confidentiality provided by ADRA with the exceptions set forth previously. Specific examples of the way the Ombudsman implements ADRA's confidentiality provisions are set forth as follows:

1. “Dispute resolution communication” (5 U.S.C. Section 571[5]) includes the names of all persons contacting an Ombudsman’s office and all data base information by which persons contacting an ombudsman’s office might be identified. The ATSDR Ombudsman will not respond to requests for names of persons contacting an Ombudsman’s office or requests for confirmation that a particular person contacted an Ombudsman’s office.
2. Informal dispute resolution at ATSDR frequently requires the Ombudsman to discuss a case, on behalf of the client, with relevant persons in the Agency. Prior to using this “shuttle diplomacy” approach to dispute resolution, the Ombudsman will obtain the client’s consent to disclose information to others within ATSDR as needed to facilitate a resolution to the dispute.
3. The ATSDR Ombudsman will independently consider the advisability of disclosing dispute resolution communications when the client and the relevant part of ATSDR consent to disclosure. The Ombudsman may refuse to disclose dispute resolution communications even when the parties agree to disclosure.
4. ATSDR employees sometimes contact an Ombudsman seeking information about an Ombudsman client to be used in defending or prosecuting an administrative or civil judicial action against the client. As required by ADRA, the ATSDR Ombudsmen will not supply any information in response to such requests.
5. The Ombudsman is sometimes directed to disclose dispute resolution communications pursuant to a discovery request or compulsory process. Such disclosure demands may originate from parties engaged in litigation with ATSDR, EPA, or parties engaged in private litigation. As required by ADRA, the ATSDR Ombudsmen will not supply any information in response to such disclosure demands, unless ordered by a court.

Access to Information

Access to information in possession of the regional or headquarters staff is essential if the ombudsman is to seek a resolution to inquiries. To that end, all staff and management officials shall promptly respond to any request from the Ombudsman for information related to the matter.

In addition to responding to the need for information, the Ombudsman’s attention should be called to any confidential or business financial/trade secret data contained in such information.

During the conduct of an inquiry, the Ombudsman will continually investigate facts. All parties will be permitted and encouraged to provide information or evidence to be considered in issue resolution. The materials gathered will be placed in a file for safe keeping to ensure the confidentiality of any data the documents may contain.

Anonymous Complaints

It is conceivable that the Ombudsman will receive anonymous complaints regarding Agency activities, Agency personnel, public health problems or issues, responsible party actions, or other related activities. The Ombudsman, in his/her discretion, may investigate the anonymous complaint, depending upon the subject matter, the amount of information received, and the ability to secure additional, necessary data. If the Ombudsman determines that an Ombudsman inquiry is not appropriate, he/she may elect to provide the available data to the applicable program office or to the Inspector General's Office or other appropriate agency or office. Issues relating to personnel matters or equal employment opportunity complaints will be referred to the appropriate ATSDR staff members.

Multi-Party Solutions; Contractor Assistance

There will be occasion when the Ombudsman must seek to expand the number of parties involved with developing a solution. For any solution to be workable, all parties who could render any solution successful or void must become a party to the Ombudsman process. Therefore the Ombudsman will be working with multiple parties to resolve the issue. In such cases, there will be a "convening process" to invite all parties to participate and develop suggested solutions.

Contractor assistance may be employed in the process of convening and facilitating solutions in multi-party matters. Upon the request of the Ombudsman, contractors may also assist in the facilitation and/or documentation of meetings of the parties. Contractors are bound by contract procedures to maintain confidentiality standards.

Every effort will be taken to ensure that all parties are treated fairly and are given ample time to present their position and propose solutions. However, at the outset of the meeting(s), the Ombudsman will develop and present prescribed guidelines for multi-party discussions.

Ombudsman Reports

In those instances where consensus is reached, the Ombudsman will, if appropriate, prepare the agreement in writing, secure the signatures of the parties, and provide all parties with a copy. The Ombudsman will sign the document as a witness or observer. The document will be available to the public through the FOIA.

In instances where no such workable agreement can be reached, the Ombudsman will prepare an Ombudsman Report of Findings and Recommendations. This report will outline the facts as explained by the parties, with a presentation of findings relating to those facts by the Ombudsman. To conclude the report, the Ombudsman will submit recommendations to the Assistant Administrator. The Ombudsman's report will be available to the public.

Recommendations contained within a report will be an attempt to resolve the matter and suggest actions or policies that are, to the extent possible, equitable to all parties.

Enforcement Cases

During investigations, the Ombudsman may uncover information indicating the possibility that a statute or regulation has been violated by an individual, governmental entity or agent, or a corporation. In such cases, the Ombudsman may determine whether it is appropriate to refer the matter to the Inspector General or other office of EPA, HHS or other federal agency. Upon making a referral to an investigative body, the Ombudsman may determine that any further investigation into the matter would likely hinder an on-going investigation; if so, he/she would cease further action. If a determination is made that any effort by the Ombudsman would not hinder the investigation, the inquiry may proceed.

The Ombudsman has the authority to gather information on any matter related to the administration of ATSDR's public health programs, whether the matter is referred by a stakeholder or is discovered on his/her own initiative during the performance of official duties. However, only under extraordinary circumstances will the Ombudsman become directly involved in pending enforcement matters within the scope of any federal or state agency, and under no circumstances will the Ombudsman seek to intervene in criminal cases.

The Ombudsman program is envisioned to be a nonlegal method of resolution to issues. To enhance the potential for resolution, the Ombudsman will not voluntarily testify in any formal judicial or administrative hearing about concerns brought to his/her attention that may later become entangled in judicial proceedings, unless compelled to do so by law.

Medical Records

On occasion, the Ombudsman may receive unsolicited health records from a stakeholder. In such cases, the Ombudsman will immediately make every effort to return the documents (return receipt requested) to the stakeholder. In the interim, **personal medical records will be secured by the Ombudsman in the designated records-holding area to avoid inadvertent release of the information.**

There may also be circumstances in which community organizations or other researchers gather data regarding individuals and make a submission to the Agency. If such records are received by the Ombudsman, and the materials contain data by which individuals may be identified, the Ombudsman will treat such records as personal medical records to be returned and/or appropriately stored in the Agency records-holding area.

Medical information is highly confidential. In the interest of preserving the confidential nature of a medical record, the Ombudsman should make every effort to avoid receiving such data. When efforts to avoid receiving medical records fail, as occasionally they do, the Ombudsman shall make every effort to secure and protect the record as described in this section.

If medical records are required to perform the Ombudsman function, the Ombudsman will seek the assistance of the ATSDR Chief Medical Officer to identify an appropriate physician to review the documents and make recommendations.

Management of Ombudsman Records

The ATSDR Ombudsman's office will maintain its records in accordance with all CDC and ATSDR records management policies and requirements and federal records management guidance and laws. Accordingly, all documentary materials (including e-mails, notes, drafts, memoranda, reports, and working papers) that fall under the definition of federal records, will be managed and disposed of in accordance with an approved records schedule contained in the ATSDR Comprehensive Records Control Schedule B-371.

Non-record materials which is specifically excluded from the definition of federal records, including duplicate copies, personal papers, non-substantive drafts, informational memos, and library materials are excluded from these requirements. This material may be disposed of when no longer needed by the Ombudsman.

Press Coordination

Members of the press may become aware of the Ombudsman's activities and may attend open meetings however, they will not be permitted to operate electronic recording devices or use photographic equipment during the meetings. Use of such equipment may inhibit participation by attendees and promote over-involvement by others. To be fair to the press however, the Ombudsman may permit photos to be taken before and after the meeting and during breaks. The Ombudsman may also advise members of the press that they make take handwritten notes during the meeting.

Until resolution occurs or an impasse is reached with regard to an issue, it is advisable that the Ombudsman provide few comments to the press other than to outline or explain the public health evaluation process at issue. When possible, any comments to the press should be prepared ahead of time, in writing, and be presented as a formal statement issued by the Office of Policy and External Affairs.

Conflicts of Interest

In the event a "conflict of interest" circumstance exists, to ensure stakeholders access to the Ombudsman process, the ATSDR Ombudsman may recuse himself/herself from the matter and refer the matter to an alternate individual. This individual may be a back-up Ombudsman or another qualified individual referred by the Ombudsman and must be approved by the Assistant Administrator. This person should be capable of neutrality on the issue and be able to respond effectively to the request, with the full authority of the Ombudsman.

If the Ombudsman determines that no conflict exists, and a party (or parties) to the matter feels the conflict is real, the matter may be referred to the Assistant Administrator for resolution.

Conflicts of interest may be real or apparent. Therefore, the Ombudsman must strive to present an appearance of neutrality. Specifically, the Ombudsman will not show either real or perceived partiality to any party. Every effort will be made to prevent any display of favoritism or loss of neutrality (e.g., traveling with a party or parties, high degree of friendship, or frequent meetings with a party or parties without inclusion of representatives of other parties).

The possibility exists that the Ombudsman may be directed by management officials to accept, avoid, or not accept a matter for consideration. Although such actions are to be rare, if ever, the Ombudsman will be directed **in writing** to accept, avoid, or cease involvement in a matter. The document, which will be available to the public, will outline the reasons for the directive to the Ombudsman.

Marketing Ombudsman Services

The Agency will make every effort to market or publicize the Ombudsman program and educate the public on the availability of and the procedures for accessing the Ombudsman. ATSDR will conduct annual reviews of the plan and tailor education strategies for implementation of the plan. However, any strategies used should be clearly defined and consistently implemented so as to foster maximum stakeholder participation in the process. Tools for educating the public on the Ombudsman program may include the use of toll-free telephone numbers and an Internet homepage. A brochure will be developed to explain and publicize the Agency's Ombudsman program.

Although not a requirement, authors of public health assessments, exposure investigations, health studies, health consultations or advisories, health education and promotion materials (or any other product developed by Agency staff); Community Involvement Coordinators; and other Agency personnel are strongly encouraged to include information about the Ombudsman program in materials for distribution to stakeholders and the public.

Section 3

Definitions

Definitions with ** are taken from 5 U.S.C. Section 571.

Advocacy: The act of pleading for, supporting, favoring or recommending a particular interest.

Advocate: An individual speaking in favor of or in representation of another party. To support, vindicate or recommend publicly or by action(s).

Alternative Dispute Resolution (ADR): A short-hand term for a set of processes that assist parties in resolving their disputes quickly and efficiently. Central to each method of ADR is the use of objectivity. ADR refers to all methods of ADR, which can include binding arbitration, advisory nonbinding arbitration, mediation, dispute panels, private judges, summary jury trials, mini-trials, settlement conferences, and facilitation.

Alternative Means of Dispute Resolution: Any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact finding, minitrials, arbitration, and use of ombuds, or any combination thereof.**

Arbitration: A decision-making process that can be binding or non-binding. A third party hears the dispute and renders a decision.

Business Confidential Information: Information submitted by any corporate entity that is claimed to be “business financial/trade secret,” and the release of which would render harm to the financial or business standing of the owner.

Case: A legal action brought by an agency or the U.S. Department of Justice. An Ombudsman does not become involved in cases.

Definitions with ** are taken from 5 U.S.C. Section 571.

Complaint: Something that is the cause or subject of protest or outcry. A complaint may result from the perceived failure by program officials to take required administrative action.

Conflict of Interest: Those instances in which the Ombudsman has a direct interest, or apparent direct interest, in the outcome of a matter. A conflict of interest is the clash of the public interest and the private pecuniary or other interests of the Ombudsman.

Consensus Processes: The method of reaching agreement on policy matters or other public conflicts affecting a number of persons or parties.

Convening: The process by which the Ombudsman calls together for discussion either all the parties involved or those that could affect the outcome of an inquiry.

Dispute Resolution Communication: means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant; a written agreement to enter into a dispute resolution proceeding, or a final written agreement reached as a result of a dispute resolution proceeding, is not a dispute resolution communication.**

Dispute Resolution Proceeding: means any process in which an alternate means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate.**

Facilitation: The method of using a neutral person to assist parties to constructively discuss issues and, if possible, generate solutions.

Grievance: A cause of distress felt to afford reason for complaint or resistance. A grievance may result from unequal treatment of parties in otherwise similar situations. In this manual, the terms grievance, complaint, problem, matter, and inquiry are used interchangeably.

In Confidence: means, with respect to information, that the information is provided—

- (A) with the expressed intent of the source that it not be disclosed; or
- (B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed.**

Inquiry: see matter, complaint and/or grievance.

Definitions with ** are taken from 5 U.S.C. Section 571.

Issue In Controversy: means an issue which is material to a decision concerning an administrative program of the agency, and with which there is disagreement—

- (A) between the agency and persons who would be substantially affected by the decision; or
- (B) between persons who would be substantially affected by the decision, except that such term shall not include any matter specified under Section 2302 or 7121(c) of 5 U.S.C.**

Matter: Any request or inquiry about public health issues received by the Ombudsman from a stakeholder. (Also see grievance and complaint.)

Medical Record: Any recording (written or electronic), document, or photograph upon which material data exist about the health or medical condition of an individual. Any such materials are highly confidential and are to be returned to the sender immediately or stored in the agency's designated record-holding area.

Mediation: A primary ADR tool. It is a process in which a third party, with no decision-making authority, assists disputants in reaching a voluntary negotiated settlement. The employment of a trained impartial third person to assist parties to negotiate or otherwise reach a workable, acceptable settlement in one or more issues. Mediation provides the parties an opportunity to propose and consider new and innovative means of settlement. The mediator is without power to impose any decision or to enforce the terms of any agreement. The Ombudsman may be the mediator.

Neutral: means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy.**

Ombudsman Report: A written report to the ATSDR Assistant Administrator that is prepared by the Ombudsman when the parties to a dispute are unable to reach a workable and supportable agreement. The report, entitled Ombudsman Report, Finding of Facts and Recommendations, will outline the facts discovered and the contentions of the parties and offer recommended solutions.

Pecuniary Interests: Any financial or monetary interest.

Pre-decisional: A final decision has not yet been rendered and public input may still be made into the matter. As long as the public participation process is active and parties are being permitted to participate, only in rare instances is involvement by the Ombudsman likely.

Definitions with ** are taken from 5 U.S.C. Section 571.

Record: Any information, written or electronic, that is preserved to document activities of Ombudsman.

Requestor: Any individual, state or local government, firm, or group that contacts an Ombudsman seeking help in any case, matter, or action.

Stakeholder: Any individual, community group, public interest group, federal agency, tribe, state or local government, firm, or group that contacts the Ombudsman seeking help in any case, matter or action.